TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 91

THE UNITED STATES, APPELLANT

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 11, 1926

(30405)

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1 In Court of Claims

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY
v.
THE UNITED STATES
No. C–58

I. *Petition*

Filed March 8, 1923

To the honorable the chief justice and judges of the Court of Claims:

Your petitioner, St. Louis, San Francisco & Texas Railway Company, respectfully represents as follows:

I

Your petitioner, a corporation, owns and operates a system of railroad in and through the State of Texas, and is a common carrier for hire of freight and passengers, its tariff charges for such services being duly published and filed with the Interstate Commerce Commission in accordance with law.

II

2 In August, 1917, your petitioner and its connecting lines transported, on government bill of lading, from Fort Sill, Oklahoma, to Camp Bowie, Texas, twenty-seven carloads of "military impedimenta," the property of the United States, including 2 cars trucks, 11 cars escort wagons, 10 cars horses and mules, 1 car forage, and 3 cars of miscellaneous troop property. For the said service of transportation your petitioner, as delivering carrier, presented its bill No. 2721 for $2,452.29, based upon lawful freight tariff rates published in tariffs filed with the Interstate Commerce Commission in accordance with law.

III

The Auditor for the War Department, in his settlement No. 33886, September 16, 1918, disallowed your petitioner's said bill in full. The disallowance was based upon the claimed applicability of certain special baggage car tariffs, published by your petitioner and other carriers, wherein the right of certain shippers and travelers to the free transportation of one carload of baggage or other specified property in connection with each twenty-five passenger fares is authorized and allowed. The auditor's action was on the authority of the ruling of the Comptroller of the Treasury in Appeal No. 27942, L. & N. R. Co., June 18, 1918.

IV

Your petitioner avers that the property shipped on the said bill of lading, as above stated, was not and could not lawfully have been carried in baggage cars, and was in no sense baggage within the common and known meaning of that term, or as used in your petitioner's published tariffs or those of its connecting carriers;
3 that the action of the accounting officers of the United States Government in disallowing your petitioner's bill rendered for such transportation service, based upon your petitioner's lawfully published tariffs, and in refusing payment to your petitioner, was erroneous and unlawful, and that there is now justly due and owing your petitioner from the United States, on account of the transportation service hereinbefore mentioned, the sum of $2,452.29.

V

Your petitioner further avers that the said disallowance and the attempted application of special baggage car tariffs to the transportation herein referred to, were erroneous and improper by reason of the provisions of a certain agreement entered into between your petitioner and other railroad carriers and the United States Government for the transportation of military traffic, to wit, an agreement entitled "Interterritorial military arrangement," dated December 28, 1916, effective January 1, 1917. The said agreement provided in substance that for the transportation of officers and enlisted men and others connected with the United States Army and United States Navy and United States Marine Corps, the Government would be charged lawful commercial fares as on file with the Interstate Commerce Commission, from starting point to destination at time of movement, less lawful land-grant deductions properly established, less five per cent (5%) additional. The said agreement provided for the transportation of one hundred and fifty (150) pounds of personal effects, properly checkable as baggage, without charge for each person, and also contained a provision that, "Company
4 battalion, regimental or Government property is not included in the above," the reference being to the hereinbefore mentioned provision relative to checkable baggage.

The said interterritorial military arrangement was an agreement proposed by and executed by the authorized representatives of the carriers throughout the United States, and accepted and executed on behalf of the United States by the Quartermaster General of the Army, United States War Department, the Chief of the Bureau of Navigation, United States Navy Department, and the Quartermaster, United States Marine Corps. Your petitioner and all connecting carriers participating in the movement herein referred to were parties to the said agreement.

Wherefore, the premises considered, your petitioner prays judgment against the United States in the sum of two thousand four hundred fifty-two dollars and twenty-nine cents ($2,452.29).

ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY,
By J. R. KOONTZ.

STATE OF MISSOURI, *City of St. Louis.*

Before me, A. J. Filipiak, a notary public in and for the State and county aforesaid, personally appeared J. R. Koontz, known to me to be the vice-president of St. Louis, San Francisco & Texas Railway Company, a corporation, and made oath before me that the allegations of the foregoing petition by him signed are true to the best of his knowledge, information, and belief.

[SEAL.]

A. J. FILIPIAK,
Notary Public.

BRITTON & GRAY,
Attorneys for Petitioner.

5 II. *General traverse*

Filed May 8, 1923

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. *Submission of case*

On March 3, 1924, this case was submitted on merits, on stipulation of parties, without argument, by Messrs. Britton & Gray, for plaintiff, and by Mr. Geo. H. Foster, for defendant.

6 IV. *Findings of fact and conclusion of law, with memorandum by the court*

Entered March 17, 1924

This case having been submitted to the court upon stipulation signed by Britton & Gray, attorneys on behalf of the plaintiff and by Robert H. Lovett, Assistant Attorney General, on behalf of the United States, the court, upon the record and said stipulation, makes the following

FINDINGS OF FACT

I

The plaintiff, a corporation, is a common carrier by railroad of freight and passengers.

II

At the time of the transportation of the troops and military impedimenta hereinafter mentioned, there were in force on the lines of the plaintiff company and other railroad carriers with which it connected, being the carriers who furnished the transportation hereinafter mentioned, certain special baggage car tariffs covering the territory through which the said troops and military im-
7 pedimenta were moved, which stated in substance and effect, the terms and conditions upon which associated travelers traveling on one ticket might become entitled to a baggage car free for the transportation of certain of their effects, on the basis generally of one car free to each twenty-five passengers.

III

Prior to January 1, 1917, the plaintiff, with other railroad carriers throughout the United States, entered into an agreement with the United States Government on the subject of fares and allowances in connection with the transportation of military traffic, entitled "Interterritorial military arrangement 1," dated December 28, 1916, signed on behalf of the carriers by their duly authorized agents and on behalf of the United States by the Quartermaster General of the Army. The said agreement was in effect beginning January 1, 1917, and throughout the year 1917. It contained among other provisions the following:

"III. Traffic Covered by This Agreement

"The net fares, allowances, and routes in connection therewith, authorized hereunder, are applicable exclusively for the transportation of officers and enlisted men and others connected with the United States Army, United States Navy, and United States Marine Corps, for whom the United States is lawfully entitled thereto, and
8 when traveling on transportation requests of the issues of the United States Army, United States Navy, and United States Marine Corps, and at United States Government expense only.

"IV. Net Fares and Allowances

"(1)(a) The fares applicable under this arrangement will be the lawful commercial fares as on file with the Interstate Commerce Commission from starting point to destination at time of movement (see exception, Section V), less lawful land-grant deductions properly established, less five per cent (5%), the five per cent allowances not to exceed the maximum allowances or exceptions as specified in Section VI. Government fares so established will apply to all military traffic as described in Section III, including special train and special car movements as well as individual and party movements (see Section XL).

"(b) Proportions will not be used in any case in the construction of fares.

* * * * * * *

"XV. BAGGAGE

(1) One hundred and fifty (150) pounds of personal effects, properly checkable as baggage under the tariff of the initial carrier, will be transported without charge for each person. Personal baggage in excess of the free allowance stated, when provision for the transportation of the excess baggage is specifically made in the United States Army, Navy, or Marine Corps transportation requests and is paid for by the United States Government, will be charged for at the regular excess baggage rate, based upon the net individual fare. When provision is not made in the transportation request for the transportation of excess baggage, collection will be made from the traveler at the regular commercial rate for weight in excess of the free allowance stated. Excess baggage charges will not be subject to allowances applicable in connection with the fares for tickets under this arrangement. Baggage regulations in other respects than above will be in accordance with the tariff of the initial carrier checking the baggage in each case.

"(2) Company, battalion, regimental, or Government property is not included in the above."

IV

In August, 1917, the plaintiff and its connections carried on Government bill of lading from Fort Sill, Oklahoma, to Camp Bowie, Texas, 27 carloads of "military impedimenta," the property
9 of the United States, including two cars trucks, eleven cars escort wagons, ten cars horses and mules, one car forage, and three cars *in*scellaneous troop property.

V

For the said service the plaintiff presented its bill 2721 for $2,452.29 on the basis of freight rates. The bill was disallowed in its entirety by the Auditor for the War Department, September 16, 1918, on the ground that the Government was entitled to the use of one baggage car free with each twenty-five men in the accompanying movement of troops, upon authority of the special baggage car tariffs referred to in Paragraph II, supra.

VI

Subsequently the plaintiff submitted to the Auditor for the War Department supplemental bill for the same service, claiming $2,234.97 on the basis of freight rates. This bill was dismissed because of the previous settlement.

VII

The amount to which the plaintiff should have been entitled for the said service on the basis of freight rates less land-grant deductions is $2,234.97.

VIII

No written protest was filed at the time the Auditor for the War Department made his original settlement disallowing the plaintiff's bill, and no appeal was taken to the Comptroller of the Treasury.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover the sum of $2,234.97. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of two thousand two hundred and thirty-four dollars and ninety-seven cents. ($2,234.97.)

MEMORANDUM

See cases of Schaff, receiver, No. A–241, decided March 3, 1924, and Wabash Railway Co., No. C–74, decided March 3, 1924.

V. *Judgment*

At a Court of Claims held in the city of Washington on the seventeenth day of March, A. D. 1924, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, shall have and recover of and from the United States the sum of two thousand two hundred and thirty-four dollars and ninety-seven cents ($2,234.97). By the court.

VI. *Proceedings after entry of judgment*

On April 1, 1924, the defendant filed a motion for a new trial.

Subsequently, towit, on April 7, 1924, the court filed an order overruling defendant's motion for a new trial.

VII. *Petition for appeal*

Filed May 22, 1924

From the judgment rendered in the above-entitled cause on the 17th day of March, 1924, in favor of the claimant, the defendants, by their Attorney General, on the 22nd day of May, 1924, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
Assistant Attorney General.

VIII. *Order allowing appeal*

On this 2nd day of June, 1924, it is ordered by the court that the defendant's application for appeal be and the same is allowed. By the court.

12 Court of Claims of the United States

[Title omitted.]

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law, with a memorandum by the court; of the judgment of the court; of the proceedings after entry of judgment; of the defendant's application for appeal; of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this sixth day of June, A. D. 1924.

[SEAL.]

F. C. KLEINSCHMIDT,
Assistant Clerk, Court of Claims.

[Indorsed on cover: File No. 30,405. Court of Claims, Term No. 91. The United States, appellant, vs. St. Louis, San Francisco & Texas Railway Company. Filed June 11th, 1924. File No. 30,405.]

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